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To: U.S. Department of State
CA/ OCS/ PRI
Adoption Regulations Docket Room
SA-29
2201 C Street, NW
Washington, D.C. 20520
Electronically emailed to: adoptionregs@state.gov

Re: State/ AR-01/ 98

Welcome House of Pearl S. Buck International Comments on 22 CFR Parts 96 and 98
Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Accreditation of Agencies; Approval of Persons; Preservations of Convention Records; Proposed Rules

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WELCOME HOUSE HISTORY AND BACKGROUND

INTRODUCTION and HISTORY

In 1949, Pearl Buck established Welcome House to find adoptive families for children of multi-ethnic parentage born in the United States who were regarded as "unadoptable". Welcome House has since expanded internationally and has helped over 7,000 orphaned and abandoned children from Europe, Asia, and South America, as well as special needs children in the United States, to find permanent homes with loving families.

Welcome House was incorporated in 1949 and unincorporated in 1991 when it merged with PSBI. Welcome House Adoption Program of Pearl S. Buck International is licensed by the Commonwealth of Pennsylvania and the states of Delaware, New Jersey and Virginia.

MISSION

The mission of Welcome House Adoption Program is to provide children throughout the world with the opportunity to grow in a loving permanent family. We continue the legacy of our founder, Pearl S. Buck, by providing the highest standard of adoption services, ongoing support for adopted children and their families, community education, advocacy and humanitarian assistance.

PROGRAMS

Welcome House currently offers the following program services.

CHINA

- Welcome House has been working in China since 1992.
- Welcome House works with the China Center for Adoption Affairs (CCAA) to facilitate adoptions from China and employs a contractor who lives in China as our agency representative.

KOREA

- Welcome House has been placing children from Korea since 1961. Welcome House starting working with our current partner, Holt Children's Services, in the early 80s.

PHILIPPINES

- Welcome House has been placing children from the Philippines since the early 80s.
- In country, adoptions are facilitated by our PSBI Philippines office in partnership with the Philippines Intercountry Adoption Board..

SWAN

- Welcome House started working with the state of Pennsylvania in 1994 to find families for older children with special needs in the US foster care system.

INDEPENDENT PROGRAMS

- As a full service adoption agency, Welcome House offers professional services, specifically home study and post placement services, directly to families who are interested in programs not offered directly by Welcome House.

POST PLACEMENT SERVICES

- Over the past year WH has developed a diverse calendar of Post Placement Activities for WH families. They include support, recreational and educational programs as well as Search services (adoptee reunifications with birth families).

Welcome House of Pearl S. Buck International's Response to the Hague Convention

Welcome House embraces the ideals embodied in the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, including:

- A child's right to grow up in a permanent family environment;
- Sending and receiving countries and adoption service providers establishing and maintaining adoption practices that protect children and their families and that acknowledge the life-long impact of adoption;
- Encouraging ongoing dialogue and cooperation between countries to ensure the continued viability of adoption as an option for children in need.

Welcome House believes that every child should remain with their birth parents or should be adopted by a family within their country of birth whenever possible. When those options are not readily available, international adoption should be a viable option. Institutionalization and foster care do not provide optimal conditions for the full emotional and physical development of children.

Summary of Significant Concerns

Most significantly, we are concerned by the **insurance provision in 96.33(h) and the risk and liability requirements in 96.39(d), 96.45 and 96.46.** Affordable insurance is currently extremely difficult for international adoption agencies to obtain. The exorbitant costs continue to escalate. Many agencies are not able to find a carrier willing to provide coverage despite an absence of complaints. In addition, the proposed regulations would impose strict liability clauses with which we fear insurance companies will not comply.

Following is a summary of our main concerns regarding this issue:

The one million dollar insurance provision per occurrence is unwarranted and nearly impossible to satisfy. The Intercountry Adoption Act (IAA) does not state a minimum dollar amount for insurance coverage; rather, it states that coverage must be "adequate". One million dollars seems excessive when damages for a single occurrence rarely reach that amount. Mandating such a high floor of coverage will force many agencies out of business due to the current difficulty of obtaining affordable insurance.

The definition of blanket waivers is ill defined. It is imperative to educate prospective clients on the various risks associated with intercountry adoption. This regulation would appear to substantially alter the current practice of informed waiver consent, interfere with a business practice that has been upheld in the courts, and may encourage superfluous litigation. In addition, it prohibits adoption agencies from protecting themselves from circumstances beyond their control.

Regulations 96.45 and 96.46 require accredited agencies to be legally responsible for the acts of their supervised providers. This proposal raises several concerns. It is often the prospective adoptive parents' decision regarding the local service and placing agency they will be using – thus, this proposed change would impose a connected relationship at the family's request, not the agency's. This regulation would have a detrimental economic impact on small entities. Primary providers would be reluctant to

work with a supervised provider, in an effort to avoid the liability requirements, which may force supervised providers out of business. This requirement places an enormous financial burden on agencies and seeks unreasonable insurance provisions. Furthermore, this proposed structure promotes litigation and is an excessive requirement.

Welcome House is also concerned that **Subpart K does not stipulate a fundamental due process that adoption agencies have a right to expect, which would include notices, standards of proof, hearings, an internal review process, timeframes, etc.** Currently, the regulations assume that adverse action is warranted because of deficiencies, and does not provide for an agency to appeal an accrediting entity's decision on the basis that it was unfounded or taken improperly. We would like to see more detail presented in this regulation to ensure that agencies are fairly represented.

Lastly, we are concerned by the provision in **96.37(f) and believe that requiring the home study personnel to have a master's degree is unnecessary limiting.** This provision would limit the qualified applicant pool for such positions thereby restricting choices for prospective adoptive parents and increasing costs. Moreover, there is inequality in the provisions since a bachelor's degree would be sufficient for non-supervisory employees, as described in 96.37(e), as long as they also have prior experience.

Welcome House of Pearl S. Buck International would like to express our appreciation for having the opportunity to provide comments on these proposed regulations. If we can be of any assistance to the Department please contact Leonette Bolarski, Program Director or Jane Cramer, Assistant Program Director at (215) 249-0100.

Comments and Recommendations on the Regulations

Recommend the reissue of the proposed regulations.

Welcome House requests that, rather than issuing final regulations, the Department reissue the proposed regulations following the December 15th public comment period. While we are pleased to see more information included in the regulations, we believe that additional data needs to be presented and incorporated into the regulations before they are finalized. This would allow a greater opportunity for open debate and input from legislative and State regulatory sources. While Welcome House supports the United States' accession to the Convention, we would rather postpone the finalization in order to ensure that the regulations are truly comprehensive.

Subpart B – Selection, Designation and Duties of Accrediting Entities

96.5 – Requirement that accrediting entity be a non-profit or public entity.

Recommend the following revision:

> (a) an organization **or proposed organization** described section 501(c)(3) of the Internal Revenue Code of 1986...

Welcome House is concerned that the probable pool of entities willing to serve as accrediting entities is currently so small as to approach a monopoly or oligopoly. We

fear that public entities do not have sufficient standards or infrastructure to support such an undertaking. State licensing bodies are often understaffed and under funded. Currently, those responsible for licensing often have little experience with international adoption and do not know how to analyze the practices of an agency.

Adding the language of "or proposed organization" would help ensure that non-profit organizations in formation could apply to become an accrediting entity. The current language seems to imply that only existing organizations could apply to be accredited. Welcome House assumes that, in the future, accreditation will be open to other organizations as well. Thus, by clarifying that other organizations would have the opportunity to apply as accrediting bodies.

Subpart F – Standards for Convention Accreditation and Approval
96.33 (g)
We are unclear of the meaning of an "independent professional assessment of risks". If this implies the mandatory use of an independent risk assessment firm, then we would like to voice the following concerns:
A professional assessment of risks does not have to be performed by an independent firm to be completed properly. The risk assessment can be done professionally by a combination of the agency's management, insurance agent and/or financial and legal counsel(s). Requiring review by an independent risk assessment firm would also cause substantial financial hardship by significantly raising the overall costs of accreditation. Further, during this risk assessment the availability and cost of insurance coverage must be considered. As mentioned previously, it is very difficult to obtain affordable insurance. For example, the quote for Director's and Officer's insurance in Illinois for an agency performing fewer than 25 placements is over $30,000 a year. In some states, D&O insurance is impossible to obtain at any cost. This challenge should not negatively impact the risk assessment nor should the cost of the risk assessment place an added financial burden on the organization. Due to the lack of clarity regarding the provision that limits an agency's right to contract, we recommend deleting the last clause referencing "blanket waiver" for purposes of "professional risk assessment".
Recommend the following revision:

> (g) The agency or person ~~uses an independent~~ **conducts a** professional assessment of the risks it assumes, **and includes the availability of coverage, cost, and the requirements of (h) in this section,** as the basis for determining the type and amount of professional, general, directors' and officer's and other liability insurance to carry. The risk assessment includes an evaluation of the risks of using supervised providers as provided for in § 96.45 and § 96.46 and of providing adoption services to clients. who, consistent with § 96.39(d), will not ~~sign blanket waivers of liability.~~

96.35 - Suitability of agencies and persons to provide adoption services consistent with the Convention.
96.35(b)(4) and (5) and (6)

The prescribed ten-year period for which agencies must provide accrediting entities with any disciplinary actions, complaints and investigations is excessively long.

Recommend that the time period be reduced to five years in all sections.

In addition, the "written complaints" mentioned in section (5) are not clearly defined. We would ask the Department to delineate between frivolous accusations and substantiated complaints so that neither the agency nor the accrediting entity is overwhelmed by unnecessary paperwork.

Recommend the following revision:

> (5) For the prior **five**-year period, any **substantiated** written complaint(s) against the agency or person ...

Furthermore, we are unclear of the definition of "malpractice complaints" in paragraph (6) and how they differ from written complaints noted in (5). If there is no difference, then we recommend "malpractice complaints" be stricken from regulation (6) since it is adequately provided for in the preceding section.

96.39(d) Blanket Waivers of Liability

This proposed rule prohibits the agency or person from requiring a client or prospective client to sign a blanket waiver of liability. We are unclear what the Department defines as a "blanket waiver" of liability. Welcome House believes that it is imperative to educate the client or prospective client on the various risks associated with intercountry adoption, including but not limited to: unknown or improperly diagnosed medical conditions, uncertainty with foreign government operations and dangers of traveling abroad.

Currently, it is standard practice for agencies to advise their clients that international adoption is not a risk-free endeavor. After acknowledging the possible hurdles and uncertainties, many prospective adoptive parents choose to proceed despite the known obstacles. However, this regulation would appear to alter current practice substantially, and to prohibit adoption agencies from protecting themselves in a reasonable manner. To be able to survive as an organization, agencies must be able to share the risk and to protect themselves contractually from the threat of superfluous litigation by adoptive parent(s). Agencies need to educate their clients about the inherent risks and have the client decide whether or not they wish to proceed.

Recommend the following revision:

> Current provision in 96.39(d) be eliminated and replaced with:
>
> (d) The agency or person **may** require a client or prospective client to sign a waiver of liability in connection with the provision of adoption services in Convention cases, **provided that it specifies in clear language the multiple risks of intercountry adoption and asks the client to voluntarily assume these risks as a condition of receiving services.**

This modification will align the regulation with current practice and encourage the identification and full disclosure of risks to prospective adoptive parent(s).

Welcome House is concerned with sections **96.45(b)(8)** and **(c)** and **96.46 (b)(9)** and **(c)** that require accredited agencies to be legally responsible for the acts of their supervised providers. While we understand the Department's intent, there are several problematic consequences.

Families Choice

Frequently prospective adoptive parents decide where they will go for a home study. Often times, placement agencies are approached by families who already have a completed home study in-hand. In these cases, the placing agency investigates the home study provider, ensures that the local agency is licensed, and enters into an agreement if they hadn't done so previously. We make this point to emphasize that accredited placing agencies and home study providers (supervised providers) are not inherently connected except by the families they serve, *at the family's decision.* We would like to make this point clear to correct the misconception stated in Preamble V(c)(6) that the primary provider chooses the supervised provider with whom to work.

Reducing Supervised Providers and Altering the Adoption Community

Accredited agencies acting as the primary provider will choose not to work with supervised providers in order to avoid the required legal responsibility. If accredited agencies no longer contract with local service agencies to perform adoption services, many supervised providers would be forced out of business. This would reduce the home study provider options, especially in more rural areas of the country, for prospective adoptive parents. In Preamble V (c) it states, "The Department also believes that the primary provider requirement will improve practice without unduly changing the adoption community's current structure for providing adoption services." However, this proposed section would have the reverse effect and would unduly change the current structure of the adoption community by undermining the network between placement agencies and local service providers.

Financial Responsibility/ Insurance

Placing agencies already face enormous difficulty obtaining and maintaining insurance (see our comments on section 96.33(h) above). We have heard repeatedly from insurance companies that they would not insure an agency that has legal responsibility for personnel other than their own employees.

Even if it were possible for an accredited agency to obtain insurance coverage for supervised providers, the coverage would be so costly that primary providers would avoid using supervised providers, choosing only to work with other accredited agencies so as to avoid the economic burden and risk. This goes back to the above argument of creating an environment that would force small agencies performing local services to close their doors.

Ironically, it is the local service agencies that can still obtain affordable insurance since they do not place children and are almost never charged in a lawsuit. This may no longer

be true if they are allowed --as in 96.45(d) --to be sued by any accredited agency with legal responsibility for their actions.

Proposed Structure Promotes Litigation

This regulation would place an enormous financial burden on agencies. Most agencies do not possess deep pockets; they are non-profit corporations with inherently limited resources. Non-profit corporations face enough of a challenge in training and promoting responsible behavior, and protecting themselves from the negligence of their own employees without asking them to assume responsibility for local service providers in the U.S. as well as for third party independent contractors in foreign countries.

Non-profit corporations deserve protection from liability. For this reason, some states have enacted statutes that provide non-profits with immunity from liability of its own negligence. For instance, the New Jersey Charitable Immunity statute provides as follows:

> **No nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes or its trustees, directors, officers, employees... shall ... be liable to respond in damages to any person who shall suffer damage from the negligence of any agent or servant of such corporation ... where such person is a beneficiary, to whatever degree, of the works of such nonprofit...(See e.g. N.J. 2A:53A-7).**

Non-profit immunity statutes codify the public policy that ensures that the dedicated staff of not for-profit corporations can accomplish their charitable purpose free of fear from litigation due to negligence. Forcing non-profit international adoption corporations to expressly assume the liability, not only for their own employees, but for supervised providers here and in foreign countries over which agencies have no direct control runs counter to other non-profit policy and law and imposes an unduly heavy burden.

Foreign Supervision

The regulations would further require agencies to assume responsibility for their foreign supervised providers. This is an impractical task. Assumption of liability by primary provider agencies is an ineffective means of accomplishing better oversight.

The same circumstances that necessitate international adoption are the factors that create uncertainty and risk in the process. For example, birthmothers abandon children due to extreme poverty, lack of adequate care and/or the ability to receive and provide care for a child. This often occurs with some degree of sub-standard pre- and post-natal care and possible undiagnosed genetic conditions. The term "abandonment" alone dictates that often very little information may be known about a child's medical history or genetic disposition. Orphanage workers are usually not skilled, trained medical professionals, but instead well-meaning volunteers or low-paid labor providing basic care only. In many instances, adequate testing to determine accurate levels of physical, development and/or emotional delays is not readily available in third world countries, too cost-prohibitive for under-funded orphanages, or is viewed as an unnecessary expense to waste on the country's unwanted children.

American agencies cannot reasonably be expected to track down every birthmother regarding genetic predispositions, visit every orphanage, and attend every doctor's visit. American agencies' chances of successfully policing their foreign counterparts are extraordinarily difficult to accomplish. Imposing this additional liability on agencies will not assist with agencies' policing efforts nor help to enforce accountability.
American agencies can, however, comply with the other suggestions set forth in section 96.46. Specifically, they can perform a reasonable investigation of foreign contacts, ensure they understand and comply with the policies of the Hague Convention and the general standards of reasonable care and ethical practice. Agencies can further ask foreign contacts to sign contracts whereby they certify to comply with the Hague Convention policies and continue to monitor and train their employees concerning acceptable procedure and practice. Disregarding the liability provisions, the remaining subsections of 96.46 propose a framework for improved supervision and accountability that is acceptable.

Excessive Provisions

With the exception of the risk and liability sections, the proposed rules offer excellent standards, a more rigorous accountability structure, a complaint registry, and disciplinary actions. It would seem that these thorough provisions should be sufficient to monitor the adoption agencies and oversee supervised providers. To unduly alter the adoption community landscape, undermine the network of providers, and put the future viability of local service providers in question seems to be contrary to the Department's stated goal of facilitating international adoption in accordance with the Hague guidelines.
We believe that instead of forcing strict legal liability this proposed rule should focus on exercising due care and a good faith effort to ensure supervised providers are in compliance with the Convention.

Recommend the following revision:

Proposed rules 96.45(b)(8) and (c)(1) and (c)(2) and 96.46 (b)(9) and (c)(1) and (c)(2) be struck from the regulations.

If the above rules are not stricken, then we recommended the following word revisions:

96.45(c) The agency or person, when acting as the primary provider and using supervised providers in the United States to provide adoption services **does the** ~~**following in relation to risk management**~~

(c)(1) ~~**Assumes**~~ **Shall not be deemed to have assumed** tort, contract and other civil liability to the prospective adoptive parent(s) **or adoptive parent(s)** for the supervised provider's provision of the contracted adoption services and its compliance with the standards in this subpart F; and

(c)(2) ~~**Maintains**~~ **Need not maintain** a bond, escrow account or liability insurance sufficient to cover the risks of liability arising from its work with supervised providers, **so long as it has a waiver of liability, signed by clients or prospective clients, that clarifies that the supervised provider**

Is a separate entity with which the client has chosen to contract with separately for certain services.

(c)(2)(d) Reword the current paragraph to read:

(c)(2)(d) **In view of the difficulties many agencies have had in the past with obtaining insurance even for their own corporation, staff and board, primary providers and supervised providers - who are typically brought together in the first instance by a voluntary choice of prospective adoptive parents more than by their own decision - may mutually agree not to pursue any legal claims against each other in connection with their respective provision of adoption services.**

96.46 (b)(9) and (c)(1) and (c)(2) Suggest changes that correspond to the parallel changes in 96.45

96.49 - Provision of medical and social information in incoming cases.

96.49 (e)(3) - (5):

While most provisions of 96.49 are reasonable in specifying what medical reports and observation reports on children should include, it also needs to be acknowledged that due to limited medical technology and limited access to information and basic historical data on a child, available medical information is not always thorough or accurate in foreign countries. These three sections request more information than can be reasonably expected in many cases, putting agencies, their representatives and overseas medical practitioners in a difficult situation.

The Central Authority in some countries requires standardized health and social records in adoption cases. In these cases physicians approved by the Convention country are employed by the Convention country to do an evaluation of the child. This evaluation is usually a summary based on the physician's review of the full medical records and a physical exam. Primary providers have no control over the selection and qualifications of the physician, the items included in the medical summary or the quality of the information provided. The Central Authority, not the primary providers, should be held liable for the accuracy of the information they provide.

Also, many countries legally limit access to personal information on children in order to protect the child's right to privacy. This protection makes it difficult or impossible, in some countries, to have access to the child's history, religious, ethnic and full medical information.

Recommend the following revisions:

(d) The agency or person itself uses reasonable efforts, or requires its supervised provider or agent in the child's country of origin who is responsible for obtaining medical information about the child on behalf of the agency or person to use reasonable efforts **within the confines of the convention country's laws and procedures**, to obtain available information, including in particular:

(e) If the agency or person provides medical information, **separate from the information provided by the convention country**, to the prospective adoptive parent(s) from an

examination by a physician or from an observation of the child by someone who is not a physician, the information **should** includes, **as reasonable efforts allow:**

(f) The agency or person itself uses reasonable efforts, or requires its supervised provider or agent in the child's country of origin who is responsible for obtaining social information about the child on behalf of the agency or person to use reasonable efforts **within the confines of the convention country's laws and procedures**, to obtain available information, including in particular:

(k) The agency or person does not withdraw a referral until the prospective adoptive parent(s) have had at least a week (unless extenuating circumstances involving the child's best interest require a more expedited decision) to consider the needs of the child and their ability to meet those needs, and to obtain physician review of medical information and other descriptive information including videotapes of the child, **if available.**

96.54 – Placement standards in outgoing cases.

96.54(b)

Recommend the following revision:

(b) The agency or person demonstrates to the satisfaction of the State court with jurisdiction over the adoption that sufficient reasonable efforts to find a timely **and qualified** adoptive placement for the child in the United States were made, or that making such reasonable efforts was not in the best interest of the child.

It is crucial that this regulation emphasize the need for "qualified" adoptive parent(s), not just a timely placement.

Subpart K - Adverse Action by the Accrediting Entity

Welcome House is concerned that Subpart K does not stipulate a fundamental due process for agencies, which would include notices, standards of proof, hearings and an internal review process, etc. While the regulations go to great length to protect the rights of the adoptive parents, as they should, and to establish a complaint registry and accountability standards, there is not a comparable medium for agencies.

We would like to see the following instituted in the regulations:

Language as outlined in the IAA to be incorporated into regulation 96.76

A detailed fundamental due process for agencies including notices, standards of proof, hearings, an internal review process, and information on how cases are handled during an appeal process

Additional detail about the transfer of Convention cases

96.76 – Procedures governing adverse action by the accrediting entity

In Section 204(c)(1) of the International Adoption Act it states in paragraph (A) that the Secretary can only temporarily or permanently debar an agency from accreditation if "there is substantial evidence that the agency or person is out of compliance with applicable requirements". In paragraph (B) the Act states that there has also "been a pattern of serious, willful, or grossly negligent failures to comply or other aggravating circumstances indicated that continued accreditation or approval would not be in the best interests of the children or family concerned". We feel that this wording clarifies the circumstances and criteria used to enforce suspension or revocation of

accreditation and should apply to accrediting entities as well. Although it is stated in regulation 96.85(b) we would like it repeated in 96.76.

Recommend that the above wording from the IAA be incorporated into Subpart K to ensure the actions of the accrediting entities comply with fundamental due process. In addition, a limitation should be included in Section 96.76(b) of the Regulations to ensure that only a child-endangering emergency would permit action to be taken by an accrediting entity without notice. For example, the Regulation might provide that action can be taken without notice only in the case of "clear and convincing evidence of imminent danger to a child."

Recommend the following revision:

(b) (2nd Sentence) If the accrediting entity took adverse action but did not communicate with the accredited agency or approved person about the deficiency in advance (such **as a case of clear and convincing evidence of imminent danger to a child**), the accrediting entity must allow the accredited agency or approved person an opportunity after the notice is issued to provide information refuting that adverse action was warranted.

Transfer of Convention Cases

Regulation **96.77(b)** distributes too much power to the accrediting entity. The accrediting entity is empowered to suspend an accredited agency without notice (96.76(b)) and order that its files and cases be transferred to another agency. In addition to the necessity of a detailed appeal process, there also needs to be clear definitions of how an accrediting entity would transfer Convention cases to another agency. We recommend that the procedure be clearly defined to avoid accusations of favoritism by the accrediting entity and to ensure that the prospective adoptive parents have a voice in the transfer process.

Appeal Process

96.78(a) states, "If the accrediting entity takes adverse action against an agency or person, the agency or person must petition the accrediting entity to terminate the adverse action, on the grounds that the deficiencies necessitating the adverse action have been corrected, before it can seek judicial review" (emphasis added). By stipulating that the only way to petition an adverse action is on the grounds that the deficiencies have been fixed assumes guilt. The termination of the adverse action will only occur if the accrediting entity is "satisfied" that there have been corrections. There is no account of a standard of proof, definition of evidence to support, or mechanism to petition the adverse action if it was unfounded or taken improperly. Additionally, there is no time frame prescribed for an agency to be able to seek judicial review when awaiting termination of an adverse action. Agencies need the opportunity to petition the accrediting entity to terminate the adverse action before it is finalized. Welcome House requests that due process for agencies be added to the regulations, or at the very least, a mandated internal review process included in the Department's Memorandum of Agreement with the designated accrediting entities.

Subpart L – Oversight of Accredited Agencies and Approved Persons by the Secretary

Regulation **96.82(b)**, states that "when informed by an accrediting entity that it has taken an adverse action that impacts an agency's or person's accreditation or approval status, the Secretary will take appropriate steps to inform the Permanent Bureau of the Hague Conference on Private International Law". Once more, the issue of adverse action without notice is problematic. This provision allows the Secretary to inform the permanent Bureau of the Hague Conference on Private International Law when the party in question has not had an opportunity to appeal the decision from the accrediting entity. There must be a detailed appeal process with notice and hearing in place to ensure the rights of the adoption agencies are protected.

Welcome House suggests that the Department create a review committee representing all sides of adoption – adoption professionals, parents, adoptees – to provide advisory services to accrediting agencies.

96.85 Temporary and permanent debarment by the Secretary

Welcome House agrees with this provision and is pleased to see that it properly contains language that defines when the Secretary is to take action for debarment.

Subpart M – Dissemination and Reporting of Information by Accrediting Entities

96.96 and 96.98

The eligibility requirements and timeframe listed in these sections provide an opportunity for smaller agencies to reach compliance with the full accreditation requirements. We are pleased that the Department is making this distinction for smaller agencies.

96.103(b)

This regulation states "the accrediting entity may determine, at its discretion, that it must conduct a site visit to investigate a complaint or other information... the accrediting entity may assess additional fees for actual costs incurred for travel and maintenance of evaluators and for any additional administrative costs to the accrediting entity". This provision is arbitrary in that the accrediting entity, at its discretion, can visit the agency at the agency's expense. Some parameters for "extraordinary cases" need to be clearly defined to protect the agencies from unnecessary fees.

General Comments on the Preamble

In the Intercountry Adoption Act of 2000 (the IAA) at Sec. 2(a)(2), Congress recognizes a "need for the uniform interpretation and implementation of the Convention in the United States and abroad" (emphasis added).

The proposed rules to the IAA understandably focus almost entirely on implementation in the U.S. However, Welcome House would like to take this opportunity to address how the Department, as the Central Authority, will advocate for uniform interpretation and implementation in other countries.

There is significant concern among the international adoption community that the manner in which the Convention has been implemented, or attempted, in many countries undermines the goal of transparency in adoption. It is WELCOME HOUSE OF PSBI' sincere hope that the Department will accept its mandate and assist those abroad, as well as regulate in the U.S. The IAA's three core purposes in Sec. 2(b) are (1)

U.S. implementation of the Convention; (2) protection of the rights of children, birth families and adoptive parents while ensuring that adoptions are in the children's best interests; and (3) improving the ability of the Federal Government to assist U.S. citizens seeking to adopt children from abroad. To fulfill this last purpose, we believe it would be extremely beneficial for the U.S. to assume a leadership role as part of its own implementation and serve as a resource and advocate for international adoption in other countries.

In its resource and advocacy role, the Department should actively investigate and document any alleged adoption abuses and use the Convention as a mechanism for resolving disputes, particularly those between two party countries. Unfounded accusations and rumors of child trafficking have undermined confidence in intercountry adoption. The U.S. should initiate a neutral fact-finding tribunal to investigate adoption abuses between party states and to provide resources for countries seeking to implement or improve implementation in their own countries.

Hopefully, the proposed regulations recognize one of the most critical considerations in child welfare decisions is achieving permanency as expeditiously and inexpensively as possible. The U.S. must guard that its own system does not become a bloated bureaucracy that slows, rather than improves the process of international adoption.